

**BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. 4121

DONALD LOWDER

2475 Van Patter
Santa Rosa, CA 95403

Pharmacist License No. RPH 28713

Respondent.

DECISION AND ORDER

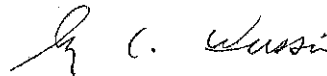
The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on November 26, 2012.

It is so ORDERED on October 25, 2012.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



STANLEY C. WEISSER
Board President

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8 **BEFORE THE**
BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 4121

11 **DONALD THOMAS LOWDER**
12 **2475 Van Patter**
13 **Santa Rosa, CA 95403**

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

14 **Pharmacist License No. RPH 28713**

15 Respondent.

16 In the interest of a prompt and speedy settlement of this matter, consistent with the public
17 interest and the responsibility of the Board of Pharmacy of the Department of Consumer Affairs,
18 the parties hereby agree to the following Stipulated Settlement and Disciplinary Order which will
19 be submitted to the Board for approval and adoption as the final disposition of the Accusation.

20
21 **PARTIES**

22 1. Virginia Herold (Complainant), Executive Officer of the Board of Pharmacy, brought
23 this action solely in her official capacity and is represented in this matter by Kamala D. Harris,
24 Attorney General of the State of California, by Joshua A. Room, Deputy Attorney General.

25 2. Respondent Donald Thomas Lowder (Respondent) is representing himself in this
26 proceeding and has chosen not to exercise his right to be represented by counsel.

27 3. On or about October 24, 1973, the Board of Pharmacy issued Pharmacist License No.
28 RPH 28713 to Donald Thomas Lowder (Respondent). The Pharmacist License was in full force

1 and effect at all times relevant to the charges brought in Accusation No. 4121 and will expire on
2 March 31, 2014, unless renewed.

3
4 JURISDICTION

5 4. Accusation No. 4121 was filed before the Board of Pharmacy (Board), Department of
6 Consumer Affairs, and is currently pending against Respondent. The Accusation and all other
7 statutorily required documents were properly served on Respondent on June 11, 2012.
8 Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation
9 No. 4121 is attached as exhibit A and incorporated herein by reference.

10
11 ADVISEMENT AND WAIVERS

12 5. Respondent has carefully read, and understands, the charges and allegations in
13 Accusation No. 4121. Respondent has also carefully read, and understands the effects of, this
14 Stipulated Settlement and Disciplinary Order.

15 6. Respondent is fully aware of his legal rights in this matter, including the right to a
16 hearing on the charges and allegations in the Accusation; the right to be represented by counsel at
17 his own expense; the right to confront and cross-examine the witnesses against him; the right to
18 present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel
19 the attendance of witnesses and the production of documents; the right to reconsideration and
20 court review of an adverse decision; and all other rights accorded by the California
21 Administrative Procedure Act and other applicable laws.

22 7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
23 every right set forth above.

24
25 CULPABILITY

26 8. Respondent admits the truth of each and every charge and allegation in Accusation
27 No. 4121. Respondent agrees that his Pharmacist License is subject to discipline and he agrees to
28 be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

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1 **2. Tolling of Suspension**

2 During the period of suspension, Respondent shall not leave California for any period
3 exceeding ten (10) days, regardless of purpose (including vacation). Any such absence in excess
4 of ten (10) days during suspension shall be considered a violation of probation.

5 Moreover, any absence from California during the period of suspension exceeding ten (10)
6 days shall toll the suspension, i.e., the suspension shall be extended by one day for each day over
7 ten (10) days Respondent is absent from California. During any such period of tolling of
8 suspension, Respondent must nonetheless comply with all terms and conditions of probation.

9 Respondent must notify the board in writing within ten (10) days of departure, and must
10 further notify the board in writing within ten (10) days of return. The failure to provide such
11 notification(s) shall constitute a violation of probation. Upon such departure and return,
12 Respondent shall not resume the practice of pharmacy until notified by the board that the period
13 of suspension has been satisfactorily completed.

14 **3. Obey All Laws**

15 Respondent shall obey all state and federal laws and regulations.

16 Respondent shall report any of the following occurrences to the board, in writing, within
17 seventy-two (72) hours of such occurrence:

- 18 • an arrest or issuance of a criminal complaint for violation of any provision of the
19 Pharmacy Law, state and federal food and drug laws, or state and federal controlled
20 substances laws
- 21 • a plea of guilty or nolo contendere in any state or federal criminal proceeding to any
22 criminal complaint, information or indictment
- 23 • a conviction of any crime
- 24 • discipline, citation, or other administrative action filed by any state or federal agency
25 which involves Respondent's Pharmacist License or which is related to the practice of
26 pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging
27 for any drug, device or controlled substance.

28 Failure to timely report such occurrence shall be considered a violation of probation.

1 **4. Status of License**

2 Respondent shall, at all times while on probation, maintain an active, current license with
3 the board, including any period during which suspension or probation is tolled. Failure to
4 maintain an active, current license shall be considered a violation of probation.

5 If Respondent's license expires or is cancelled by operation of law or otherwise at any time
6 during the period of probation, including any extensions thereof due to tolling or otherwise, upon
7 renewal or reapplication Respondent's license shall be subject to all terms and conditions of this
8 probation not previously satisfied.

9 **5. Report to the Board**

10 Respondent shall report to the board quarterly, on a schedule as directed by the board or its
11 designee. The report shall be made either in person or in writing, as directed. Among other
12 requirements, Respondent shall state in each report under penalty of perjury whether there has
13 been compliance with all the terms and conditions of probation. Failure to submit timely reports
14 in a form as directed shall be considered a violation of probation.

15 Any period(s) of delinquency in submission of reports as directed may be added to the total
16 period of probation. If the final probation report is not made as directed, probation shall be
17 automatically extended until such time as the final report is made and accepted by the board.

18 **6. Interview with the Board**

19 Upon receipt of reasonable prior notice, Respondent shall appear in person for interviews
20 with the board or its designee, at such intervals and locations as are determined by the board or its
21 designee. Failure to appear for any scheduled interview without prior notification to board staff,
22 or failure to appear for two (2) or more scheduled interviews with the board or its designee during
23 the period of probation, shall be considered a violation of probation.

24 **7. Cooperate with Board Staff**

25 Respondent shall cooperate with the board's inspection program and with the board's
26 monitoring and investigation of Respondent's compliance with the terms and conditions of his
27 probation. Failure to cooperate shall be considered a violation of probation.

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1 **8. Continuing Education**

2 Respondent shall provide evidence of efforts to maintain skill and knowledge as a
3 pharmacist as directed by the board or its designee.

4 **9. Notification of Change in Employment, Name, Address(es), or Phone(s)**

5 Respondent shall notify the board in writing within ten (10) days of any change of
6 employment. Said notification shall include the reasons for leaving, the address of the new
7 employer, the name of the supervisor and owner, and the work schedule if known. Respondent
8 shall further notify the board in writing within ten (10) days of a change in name, residence
9 address, mailing address, or phone number.

10 Failure to timely notify the board of any change in employer(s), name(s), address(es), or
11 phone number(s) shall be considered a violation of probation.

12 **10. Supervised Practice**

13 During the period of probation, Respondent shall practice only under the supervision of a
14 licensed pharmacist not on probation with the board. Upon and after the effective date of this
15 decision, Respondent shall not practice pharmacy and his license shall be automatically
16 suspended until a supervisor is approved by the board or its designee. The supervision shall be,
17 as required by the board or its designee, either:

18 Continuous – At least 75% of a work week

19 Substantial - At least 50% of a work week

20 Partial - At least 25% of a work week

21 Daily Review - Supervisor's review of probationer's daily activities within 24 hours

22 Within thirty (30) days of the effective date of this decision, Respondent shall have his
23 supervisor submit notification to the board in writing stating that the supervisor has read the
24 decision in case number 4121 and is familiar with the required level of supervision as determined
25 by the board or its designee. It shall be the Respondent's responsibility to ensure that his
26 employer(s), pharmacist-in-charge and/or supervisor(s) submit timely acknowledgement(s) to the
27 board. Failure to cause the direct supervisor and the pharmacist-in-charge to submit timely
28 acknowledgements to the board shall be considered a violation of probation.

1 If Respondent changes employment, it shall be Respondent's responsibility to ensure that
2 his employer(s), pharmacist-in-charge and/or supervisor(s) submit timely acknowledgement(s) to
3 the board. Respondent shall have his new supervisor, within fifteen (15) days after employment
4 commences, submit notification to the board in writing stating the direct supervisor and
5 pharmacist-in-charge have read the decision in case number 4121 and is/are familiar with the
6 level of supervision as determined by the board. Respondent shall not practice pharmacy and his
7 license shall be automatically suspended until the board or its designee approves a new
8 supervisor. Failure to cause the direct supervisor and the pharmacist-in-charge to submit timely
9 acknowledgements to the board shall be considered a violation of probation.

10 Within ten (10) days of leaving employment, Respondent shall notify the board in writing.

11 During any such suspension, respondent shall not enter any pharmacy area or any portion of
12 the licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor
13 of drugs licensed by the board, or any manufacturer, or where dangerous drugs and devices or
14 controlled substances are maintained. Respondent shall not practice pharmacy nor do any act
15 involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient
16 consultation; nor shall respondent manage, administer, or be a consultant to any licensee of the
17 board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs
18 and controlled substances. Respondent shall not resume practice until notified by the board.

19 During any such suspension, respondent shall not engage in any activity that requires the
20 professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the
21 practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or a
22 designated representative for any entity licensed by the board.

23 Failure to comply with any such suspension shall be considered a violation of probation.

24 **11. Notice to Employers**

25 During the period of probation, Respondent shall notify all present and prospective
26 employers of the decision in case number 4121 and the terms, conditions and restrictions imposed
27 on Respondent by the decision, as follows:

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1 Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of
2 Respondent undertaking any new employment; Respondent shall cause his direct supervisor,
3 pharmacist-in-charge (including each new pharmacist-in-charge employed during Respondent's
4 tenure of employment) and owner to report to the board in writing acknowledging that the listed
5 individual(s) has/have read the decision in case number 4121, and terms and conditions imposed
6 thereby. It shall be Respondent's responsibility to ensure that his employer(s) and/or
7 supervisor(s) submit timely acknowledgment(s) to the board.

8 If Respondent works for or is employed by or through a pharmacy employment service,
9 Respondent must notify his direct supervisor, pharmacist-in-charge, and owner at every entity
10 licensed by the board of the terms and conditions in case number 4121 in advance of Respondent
11 starting work there. A record of this notification must be provided to the board upon request.

12 Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen
13 (15) days of Respondent undertaking new employment by or through a pharmacy employment
14 service, Respondent shall cause his direct supervisor with the pharmacy employment service to
15 report to the board in writing acknowledging that he has read the decision in case number 4121
16 and the terms and conditions imposed thereby. It shall be Respondent's responsibility to ensure
17 that his employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

18 Failure to timely notify present or prospective employer(s) or to cause such employer(s) to
19 submit timely acknowledgment(s) to the board shall be considered a violation of probation.

20 "Employment" within the meaning of this provision shall include any full-time,
21 part-time, temporary, relief or pharmacy management service as a pharmacist or any
22 position for which a pharmacist license is a requirement or criterion for employment,
whether the Respondent is an employee, independent contractor or volunteer.

23 **12. No Supervision of Interns, Serving as Pharmacist-in-Charge (PIC), Serving as**
24 **Designated Representative-in-Charge, or Serving as a Consultant**

25 During the period of probation, Respondent shall not supervise any intern pharmacist, be
26 the pharmacist-in-charge or designated representative-in-charge of any entity licensed by the
27 board nor serve as a consultant unless otherwise specified in this order. Assumption of any such
28 unauthorized supervision responsibilities shall be considered a violation of probation.

1 **13. Tolling of Probation**

2 Except during periods of suspension, Respondent shall, at all times while on probation, be
3 employed as a pharmacist in California for a minimum of forty (40) hours per calendar month.
4 Any month during which this minimum is not met shall toll the period of probation, i.e., the
5 period of probation shall be extended by one month for each month during which this minimum is
6 not met. During any such period of tolling of probation, Respondent must nonetheless comply
7 with all terms and conditions of probation.

8 Should Respondent, regardless of residency, for any reason (including vacation) cease
9 practicing as a pharmacist for a minimum of forty (40) hours per calendar month in California,
10 Respondent must notify the board in writing within ten (10) days of the cessation of practice, and
11 must further notify the board in writing within ten (10) days of the resumption of practice. Any
12 failure to provide such notification(s) shall be considered a violation of probation.

13 It is a violation of probation for Respondent's probation to remain tolled pursuant to the
14 provisions of this condition for a total period, counting consecutive and non-consecutive months,
15 exceeding thirty-six (36) months.

16 "Cessation of practice" means any calendar month during which Respondent is
17 not practicing as a pharmacist for at least forty (40) hours, as defined by Business and
18 Professions Code section 4000 et seq. "Resumption of practice" means any calendar
19 month during which Respondent is practicing for at least forty (40) hours as a
20 pharmacist as defined by Business and Professions Code section 4000 et seq.

21 **14. Community Services Program**

22 Within sixty (60) days of the effective date of this decision, Respondent shall submit to the
23 board or its designee, for prior approval, a community service program in which Respondent shall
24 provide free health-care related services on a regular basis to a community or charitable facility or
25 agency for at least one hundred (100) hours per year for each year of probation. Within thirty
26 (30) days of board approval thereof, Respondent shall submit documentation to the board
27 demonstrating commencement of the community service program. A record of this notification
28 must be provided to the board upon request. Respondent shall report on progress with the
community service program in the quarterly reports. Failure to timely submit, commence, or
comply with the program shall be considered a violation of probation.

1 **15. No Ownership of Licensed Premises**

2 Respondent shall not own, have any legal or beneficial interest in, or serve as a manager,
3 administrator, member, officer, director, trustee, associate, or partner of any business, firm,
4 partnership, or corporation currently or hereinafter licensed by the board. Respondent shall sell
5 or transfer any legal or beneficial interest in any entity licensed by the board within ninety (90)
6 days following the effective date of this decision and shall immediately thereafter provide written
7 proof thereof to the board. Failure to timely divest any legal or beneficial interest(s) or provide
8 documentation thereof shall be considered a violation of probation.

9 **16. Ethics Course**

10 Within sixty (60) calendar days of the effective date of this decision, Respondent shall, at
11 his own expense, enroll in a course in ethics approved in advance by the board or its designee.

12 Failure to initiate the course during the first year of probation, and complete it within the
13 second year of probation, shall be considered a violation of probation.

14 Respondent shall submit a certificate of completion to the board or its designee within five
15 (5) days after completing the course.

16 **17. Pharmacists Recovery Program (PRP)**

17 Within thirty (30) days of the effective date of this decision, Respondent shall contact the
18 Pharmacists Recovery Program (PRP) for evaluation, and shall immediately thereafter enroll,
19 successfully participate in, and complete the treatment contract and any subsequent addendums as
20 recommended and provided by the PRP and as approved by the board or its designee. The costs
21 for PRP participation shall be borne by Respondent.

22 If Respondent is currently enrolled in the PRP, said participation is now mandatory and as
23 of the effective date of this decision is no longer considered a self-referral under Business and
24 Professions Code section 4362(c)(2). Respondent shall successfully participate in and complete
25 his current contract and any subsequent addendums with the PRP.

26 Failure to timely contact or enroll in the PRP, or successfully participate in and complete
27 the treatment contract and/or any addendums, shall be considered a violation of probation.

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1 Probation shall be automatically extended until Respondent successfully completes the
2 PRP. Any termination from the PRP program shall result in suspension by the board.
3 Respondent may not resume the practice of pharmacy until notified by the board in writing.

4 Any confirmed positive test for alcohol or for any drug not lawfully prescribed by a
5 licensed practitioner as part of a documented medical treatment shall result in the automatic
6 suspension of practice by Respondent and shall be considered a violation of probation.
7 Respondent may not resume the practice of pharmacy until notified by the board in writing.

8 During any such suspension, respondent shall not enter any pharmacy area or any portion of
9 the licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor
10 of drugs licensed by the board, or any manufacturer, or where dangerous drugs and devices or
11 controlled substances are maintained. Respondent shall not practice pharmacy nor do any act
12 involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient
13 consultation; nor shall respondent manage, administer, or be a consultant to any licensee of the
14 board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs
15 and controlled substances. Respondent shall not resume practice until notified by the board.

16 During any such suspension, respondent shall not engage in any activity that requires the
17 professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the
18 practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or a
19 designated representative for any entity licensed by the board.

20 Failure to comply with any such suspension shall be considered a violation of probation.

21 Respondent shall pay administrative fees as invoiced by the PRP or its designee. Fees not
22 timely paid to the PRP shall constitute a violation of probation. The board will collect unpaid
23 administrative fees as part of the annual probation monitoring costs if not submitted to the PRP.

24 **18. Prescription Coordination and Monitoring of Prescription Use**

25 Within thirty (30) days of the effective date of this decision, respondent shall submit for
26 prior approval by the board or its designee, the name and qualifications of a single physician,
27 nurse practitioner, physician assistant, or psychiatrist of respondent's choice, who shall be aware
28 of respondent's history with the use of alcohol, controlled substances, and/or dangerous drugs,

1 and who will coordinate and monitor any prescriptions for respondent for dangerous drugs,
2 controlled substances, or mood-altering drugs. The approved practitioner shall be provided with a
3 copy of the board's Accusation and decision. A record of this notification must be provided to
4 the board upon request. Respondent shall sign a release authorizing the practitioner to
5 communicate with the board about respondent's treatment(s). The coordinating physician, nurse
6 practitioner, physician assistant, or psychiatrist shall report to the board on a quarterly basis for
7 the duration of probation regarding respondent's compliance with this condition. If any
8 substances considered addictive have been prescribed, the report shall identify a program for the
9 time limited use of any such substances. The board or its designee may require that the single
10 coordinating physician, nurse practitioner, physician assistant or psychiatrist be a specialist in
11 addictive medicine, or consult a specialist in addictive medicine. Should respondent, for any
12 reason, cease supervision by the approved practitioner, respondent shall notify the board
13 immediately and shall, within thirty (30) days of ceasing treatment, submit the name of a
14 replacement physician, nurse practitioner, physician assistant, or psychiatrist of respondent's
15 choice to the board or its designee for prior approval. Failure to timely submit the selected
16 practitioner or replacement practitioner to the board for approval, or to ensure the required
17 reporting thereby on the quarterly reports, shall be considered a violation of probation.

18 If at any time an approved practitioner determines that respondent is unable to practice
19 safely or independently as a pharmacist, the practitioner shall notify the board immediately by
20 telephone and follow up by written letter within three (3) working days. Upon notification from
21 the board or its designee of this determination, respondent shall be automatically suspended and
22 shall not resume practice until notified by the board that practice may be resumed.

23 During any such suspension, respondent shall not enter any pharmacy area or any portion of
24 the licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor
25 of drugs licensed by the board, or any manufacturer, or where dangerous drugs and devices or
26 controlled substances are maintained. Respondent shall not practice pharmacy nor do any act
27 involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient
28 consultation; nor shall respondent manage, administer, or be a consultant to any licensee of the

board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs and controlled substances. Respondent shall not resume practice until notified by the board.

During any such suspension, respondent shall not engage in any activity that requires the professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or a designated representative for any entity licensed by the board.

Failure to comply with any such suspension shall be considered a violation of probation.

19. Abstain from Drug and Alcohol Possession or Use

Respondent shall completely abstain from the possession or use of alcohol, controlled substances, dangerous drugs and their associated paraphernalia except when the drugs are lawfully prescribed by a licensed practitioner as part of a documented medical treatment. Upon request of the board or its designee, Respondent shall provide documentation from the licensed practitioner that the prescription for the drug was legitimately issued and is a necessary part of the treatment of the Respondent. Failure to timely provide such documentation shall be considered a violation of probation. Respondent shall ensure that he is not in the same physical location as individuals who are using illicit substances even if Respondent is not personally ingesting the drugs. Any possession or use of alcohol, controlled substances, or their associated paraphernalia not supported by the documentation timely provided, and/or any physical proximity to persons using illicit substances, shall be considered a violation of probation.

20. Random Drug Screening

Respondent, at his own expense, shall participate in random testing, including but not limited to biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or other drug screening program for the detection of alcohol, narcotics, hypnotics, dangerous drugs or controlled substances as the board or its designee may direct. Respondent may be required to participate in testing for the entire probation period and frequency of testing will be determined by the board or its designee. At all times, Respondent shall fully cooperate with the board or its designee, and shall, when directed, submit to such tests and samples.

Failure to timely submit to testing as directed shall be considered a violation of probation.

1 Upon request of the board or its designee, Respondent shall provide documentation from a
2 licensed practitioner that the prescription for a detected drug was legitimately issued and is a
3 necessary part of the treatment of the Respondent. Failure to timely provide such documentation
4 shall be considered a violation of probation. Any confirmed positive test for alcohol or for any
5 drug not lawfully prescribed by a licensed practitioner as part of a documented medical treatment
6 shall be considered a violation of probation and shall result in automatic suspension of practice by
7 Respondent. Respondent may not resume practice until notified by the board in writing.

8 During any such suspension, respondent shall not enter any pharmacy area or any portion of
9 the licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor
10 of drugs licensed by the board, or any manufacturer, or where dangerous drugs and devices or
11 controlled substances are maintained. Respondent shall not practice pharmacy nor do any act
12 involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient
13 consultation; nor shall respondent manage, administer, or be a consultant to any licensee of the
14 board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs
15 and controlled substances. Respondent shall not resume practice until notified by the board.

16 During any such suspension, respondent shall not engage in any activity that requires the
17 professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the
18 practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or a
19 designated representative for any entity licensed by the board.

20 Failure to comply with any such suspension shall be considered a violation of probation.

21 **21. Reimbursement of Board Costs**

22 As a condition precedent to successful completion of probation, Respondent shall pay to the
23 board its costs of investigation and prosecution in the amount of \$4,898.00. Respondent shall be
24 permitted to pay these costs in a payment plan approved by the Board or its designee, so long as
25 full payment is made within fifty-four (54) months of the effective date of this decision. There is
26 to be no deviation from this schedule absent prior written approval by the Board or its designee.
27 Failure to pay costs by the deadline(s) as directed shall be considered a violation of probation.

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1 The filing of bankruptcy by Respondent shall not relieve Respondent of his responsibility to
2 reimburse the board its costs of investigation and prosecution.

3 **22. Probation Monitoring Costs**

4 Respondent shall pay any costs associated with probation monitoring as determined by the
5 board each and every year of probation. Such costs shall be payable to the board on a schedule as
6 directed by the board or its designee. Failure to pay such costs by the deadline(s) as directed shall
7 be considered a violation of probation.

8 **23. Violation of Probation**

9 If Respondent has not complied with any term or condition of probation, the board shall
10 have continuing jurisdiction over Respondent, and probation shall automatically be extended,
11 until all terms and conditions have been satisfied or the board has taken other action as deemed
12 appropriate to treat the failure to comply as a violation of probation, to terminate probation, and
13 to impose the penalty that was stayed.

14 If Respondent violates probation in any respect, the board, after giving Respondent notice
15 and an opportunity to be heard, may revoke probation and carry out the disciplinary order that
16 was stayed. Notice and opportunity to be heard are not required for those provisions stating that a
17 violation thereof may lead to automatic termination of the stay and/or revocation of the license. If
18 a petition to revoke probation or an accusation is filed against Respondent during probation, the
19 board shall have continuing jurisdiction and the period of probation shall be automatically
20 extended until the petition to revoke probation or accusation is heard and decided.

21 **24. License Surrender While on Probation/Suspension**

22 Following the effective date of this decision, should Respondent cease practice due to
23 retirement or health, or be otherwise unable to satisfy the terms and conditions of probation,
24 Respondent may tender his license to the board for surrender. The board or its designee shall
25 have the discretion whether to grant the request for surrender or take any other action it deems
26 appropriate and reasonable. Upon formal acceptance of the surrender of the license, Respondent
27 will no longer be subject to the terms and conditions of probation. This surrender constitutes a
28 record of discipline and shall become a part of the Respondent's license history with the board.

1 Upon acceptance of surrender, Respondent shall relinquish his pocket and wall license to
2 the board within ten (10) days of notification by the board the surrender is accepted.

3 Respondent may not reapply for any license from the board for three (3) years from the
4 effective date of the surrender. Respondent shall meet all requirements applicable to the license
5 sought as of the date the application for that license is submitted to the board, including any
6 outstanding costs.

7 **25. Completion of Probation**

8 Upon written notice by the board or its designee indicating successful completion of
9 probation, Respondent's license will be fully restored.

10 ACCEPTANCE

11 I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the
12 stipulation and the effect it will have on my Pharmacist License. I enter into this Stipulated
13 Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be
14 bound by the Decision and Order of the Board of Pharmacy.

15 DATED:

9-3-2012



DONALD THOMAS LOWDER
Respondent

17 ENDORSEMENT

18 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
19 submitted for consideration by the Board of Pharmacy of the Department of Consumer Affairs.

20 Dated: 9/17/2012

21 Respectfully submitted,

22 KAMALA D. HARRIS
Attorney General of California
23 FRANK H. PACOE
Supervising Deputy Attorney General

24 

25 JOSHUA A. ROOM
26 Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 4121

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2 FRANK H. PACOE
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Attorneys for Complainant

7
8 **BEFORE THE**
BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 4121

11 **DONALD THOMAS LOWDER**
12 **2475 Van Patter Drive**
13 **Santa Rosa, CA 95403**

A C C U S A T I O N

14 **Pharmacist License No. RPH 28713**

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
20 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

21 2. On or about October 24, 1973, the Board of Pharmacy issued Pharmacist License No.
22 RPH 28713 to Donald Thomas Lowder (Respondent). The License was in full force and effect at
23 all times relevant to the charges herein and will expire on March 31, 2012, unless renewed.

24 **JURISDICTION**

25 3. This Accusation is brought before the Board of Pharmacy (Board), Department of
26 Consumer Affairs, under the authority of the following laws. All section references are to the
27 Business and Professions Code (Code) unless otherwise indicated.

28 ///

1 4. Section 4011 of the Code provides that the Board shall administer and enforce both
2 the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances
3 Act [Health & Safety Code, § 11000 et seq.].

4 5. Section 4300(a) of the Code provides that every license issued by the Board may be
5 suspended or revoked.

6 6. Section 118(b) of the Code provides, in pertinent part, that the suspension, expiration,
7 surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a
8 disciplinary action during the period within which the license may be renewed, restored, reissued
9 or reinstated. Section 4402(a) of the Code provides that any pharmacist license that is not
10 renewed within three years following its expiration may not be renewed, restored, or reinstated
11 and shall be canceled by operation of law at the end of the three-year period.

12 STATUTORY AND REGULATORY PROVISIONS

13 7. Section 4301 of the Code provides, in pertinent part, that the Board shall take action
14 against any holder of a license who is guilty of "unprofessional conduct," defined to include, but
15 not be limited to, any of the following:

16 (f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or
17 corruption, whether the act is committed in the course of relations as a licensee or otherwise, and
18 whether the act is a felony or misdemeanor or not.

19 (g) Knowingly making or signing any certificate or other document that falsely represents
20 the existence or nonexistence of a state of facts.

21 (h) The administering to oneself, of any controlled substance, or the use of any dangerous
22 drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to
23 oneself, to a person holding a license under this chapter, or to any other person or to the public, or
24 to the extent that the use impairs the ability of the person to conduct with safety to the public the
25 practice authorized by the license.

26 (j) The violation of any of the statutes of this state, of any other state, or of the United
27 States regulating controlled substances and dangerous drugs.

28 ///

1 (o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
2 violation of or conspiring to violate any provision or term of this chapter or of the applicable
3 federal and state laws and regulations governing pharmacy, including regulations established by
4 the board or by any other state or federal regulatory agency.

5 8. Section 4059 of the Code, in pertinent part, prohibits furnishing of any dangerous
6 drug or dangerous device except upon the prescription of an authorized prescriber.

7 9. Section 4060 of the Code provides, in pertinent part, that no person shall possess any
8 controlled substance, except that furnished upon a valid prescription/drug order.

9 10. Section 4324 of the Code, in pertinent part, makes it unlawful for a person to falsely
10 make, alter, forge, utter, publish, pass, or attempt to pass, as genuine, a prescription for a drug, or
11 to have in his or her possession a drug secured by a forged prescription.

12 11. Section 4327 of the Code makes it unlawful for any person, while on duty, to sell,
13 dispense or compound any drug while under the influence of a dangerous drug or alcohol.

14 12. Health and Safety Code section 11150 provides, in pertinent part, that no person other
15 than an authorized prescriber shall write or issue a prescription.

16 13. Health and Safety Code section 11157 provides that no person shall issue a
17 prescription that is false or fictitious in any respect.

18 14. Health and Safety Code section 11170 provides that no person shall prescribe,
19 administer, or furnish a controlled substance for himself or herself.

20 15. Health and Safety Code section 11173, subdivision (a), provides that no person shall
21 obtain or attempt to obtain controlled substances, or procure or attempt to procure the
22 administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation,
23 or subterfuge; or (2) by the concealment of a material fact.

24 16. Health and Safety Code section 11175 makes it unlawful for any person to obtain or
25 possess a prescription that does not comply with the Uniform Controlled Substances Act [Health
26 & Safety Code, § 11000 et seq.], to obtain a controlled substance by means of such non-compliant
27 prescription, or to possess a controlled substance obtained by such a prescription.

28 ///

1 17. Health and Safety Code section 11350, in pertinent part, makes it unlawful to possess
2 any controlled substance listed in Schedule II (Health and Safety Code section 11055),
3 subdivision (b) or (c), or any narcotic drug in Schedules III-V, absent a valid prescription.

4 18. Health and Safety Code section 11368, in pertinent part, makes it unlawful to forge or
5 alter a prescription, issue or utter an altered prescription, issue or utter a prescription with forged
6 or fictitious signature for a narcotic drug, obtain a narcotic drug by a forged, fictitious, or altered
7 prescription, or possess a narcotic drug secured by a forged, fictitious, or altered prescription.

8 19. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
9 administrative law judge to direct a licensee found to have committed a violation of the licensing
10 act to pay a sum not to exceed its reasonable costs of investigation and enforcement.

11 CONTROLLED SUBSTANCES / DANGEROUS DRUGS

12 20. Section 4021 of the Code states:

13 “‘Controlled substance’ means any substance listed in Chapter 2 (commencing with Section
14 11053) of Division 10 of the Health and Safety Code.”

15 21. Section 4022 of the Code states, in pertinent part:

16 “‘Dangerous drug’ or ‘dangerous device’ means any drug or device unsafe for self use,
17 except veterinary drugs that are labeled as such, and includes the following:

18 “(a) Any drug that bears the legend: ‘Caution: federal law prohibits dispensing without
19 prescription,’ ‘Rx only,’ or words of similar import.

20 ...

21 “(c) Any other drug or device that by federal or state law can be lawfully dispensed only on
22 prescription or furnished pursuant to Section 4006.”

23 22. **Norco, Vicodin, Vicodin ES, Lortab, and Lorcet** are among the brand names for
24 compounds of varying dosages of acetaminophen (aka APAP) and **hydrocodone**, a Schedule III
25 controlled substance as designated by Health and Safety Code section 11056(e)(4) and dangerous
26 drug as designated by Business and Professions Code section 4022. The varying compounds are
27 also known generically as **Hydrocodone with APAP**. These are all narcotic drugs.

28 ///

FACTUAL BACKGROUND

23. From an unknown start date until on or about December 2, 2010, Respondent worked as a pharmacist for a Kaiser Foundation Hospital Pharmacy (#521; PHY 46284) in Rohnert Park, CA, where as a pharmacist Respondent had access to controlled substances and dangerous drugs.

24. During this employment, Respondent took advantage of this access to steal/divert controlled substances and dangerous drugs, including **Norco** and/or other **Hydrocodone with APAP** controlled drug products, for his own use. The exact number of instances of diversion by Respondent, and the full quantity of controlled substances or dangerous drugs diverted/stolen by Respondent, are not known, but in the course of investigations conducted by Kaiser and by Board Inspector(s), the following were among the observations, admissions, and revelations reported:

a. In or about November 2010, Kaiser auditors/investigators noted indicators of possible drug diversion at Kaiser # 521 involving **Hydrocodone with APAP 10/325mg** (generic **Norco**). A subsequent inventory of the stock of **Hydrocodone with APAP 10/325mg** revealed a series of prescriptions allegedly filled by Respondent between August and October 2010 where: (i) the prescriptions were logged out of the perpetual inventory by Respondent but never sold; (ii) the drugs were never returned to stock; and (iii) the prescription numbers used for the alleged fills either belonged to another patient and drug or belonged to another patient for a different quantity of the same drug. Fictitious records had been entered into the perpetual inventory log so that the quantity of the drug on hand always matched the balance in the log. The pharmacy internal audit department determined that 8,160 tablets of **Hydrocodone with APAP 10/325mg** were missing for the audit period from July 4, 2009 through December 2, 2010.

b. On or about December 2, 2010, Respondent was interviewed by investigators from Kaiser. Respondent initially denied any wrongdoing, but then submitted a handwritten letter of resignation and under further questioning admitted to diverting full and partial bottles of drugs containing **Hydrocodone with APAP** from the pharmacy. Respondent was non-specific as to the dates or amounts diverted, but he did acknowledge that he developed an addiction to the drug(s), and that he was taking 25 to 30 tablets per day. Respondent admitted his most recent diversion was of a 100-tablet bottle of **Hydrocodone with APAP 10/325mg** on November 30, 2010.

1 c. The perpetual inventory log records for **Hydrocodone with APAP 10/325mg**
2 from July 30, 2010 through November 30, 2010 showed multiple entries made by Respondent
3 that were identified to be fictitious (i.e., the identified prescriptions were fictitious).

4 d. Surveillance video taken by Kaiser of the pharmacy area showed, on or about
5 October 25, 2010, Respondent appearing to place one or more 100-count bottles of **Hydrocodone**
6 **with APAP 10/325mg** into his pocket. On that same date, Respondent made an entry relating to
7 a fictitious prescription on the perpetual inventory log for **Hydrocodone with APAP 10/325mg**.

8 e. On or about April 15, 2011, Respondent gave an oral and written statement to
9 Board Inspector(s) in which he admitted an addiction to **Hydrocodone**-containing medications,
10 that began sometime after he was prescribed **Vicodin** for a medical condition in 2004. At some
11 point, he realized that he was physically addicted to **Hydrocodone with APAP**. He was not sure
12 when he began stealing **Hydrocodone with APAP 10/325mg** from the pharmacy, but by the end
13 of his employment with Kaiser he had progressed to taking approximately 25-30 tablets per day.

14
15 FIRST CAUSE FOR DISCIPLINE

16 (Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit or Corruption)

17 25. Respondent is subject to discipline under section 4301(f) of the Code in that
18 Respondent, as described in paragraphs 23 and 24 above, committed numerous acts involving
19 moral turpitude, dishonesty, fraud, deceit, or corruption.

20
21 SECOND CAUSE FOR DISCIPLINE

22 (Creation/Signature of False Documents)

23 26. Respondent is subject to discipline under section 4301(g) of the Code in that
24 Respondent, as described in paragraphs 23 and 24 above, created and/or signed documents that
25 falsely represented the existence or nonexistence of a state of facts.

26 ///

27 ///

28 ///

1 THIRD CAUSE FOR DISCIPLINE

2 (Self-Administration of Controlled Substance and/or Alcohol)

3 27. Respondent is subject to discipline under section 4301(h) of the Code, and/or 4301(j)
4 and/or (o) of the Code and Health and Safety Code section 11170, in that Respondent, as
5 described in paragraphs 23 and 24 above, administered a controlled substance to himself.

6
7 FOURTH CAUSE FOR DISCIPLINE

8 (Furnishing of Controlled Substance)

9 28. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section
10 4059 of the Code, and/or Health and Safety Code section 11170 in that Respondent, as described
11 in paragraphs 23 and 24 above, furnished to himself or another without a valid prescription,
12 and/or conspired to furnish, and/or assisted or abetted furnishing of, a controlled substance.

13
14 FIFTH CAUSE FOR DISCIPLINE

15 (Possession of Controlled Substance)

16 29. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section
17 4060 of the Code, and/or Health and Safety Code section 11350, in that Respondent, as described
18 in paragraphs 23 and 24 above, possessed, conspired to possess, and/or assisted in or abetted
19 possession of, a controlled substance, without a prescription.

20
21 SIXTH CAUSE FOR DISCIPLINE

22 (Working While Under the Influence)

23 30. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code,
24 and/or section 4327 of the Code, in that Respondent, as described in paragraphs 23 and 24 above,
25 was under the influence of a controlled substance while selling or dispensing drugs.

26 ///

27 ///

28 ///

1 SEVENTH CAUSE FOR DISCIPLINE

2 (Obtaining Controlled Substance by Fraud, Deceit or Subterfuge)

3 31. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code,
4 and/or Health and Safety Code section 11173(a), in that Respondent, as described in paragraphs
5 23 and 24 above, obtained, conspired to obtain, and/or assisted in or abetted the obtaining of a
6 controlled substance, by fraud, deceit, subterfuge, or concealment of material fact.

7
8 EIGHTH CAUSE FOR DISCIPLINE

9 (Making, Uttering and/or Using False or Forged Prescriptions)

10 32. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section
11 4324 of the Code, and/or Health and Safety Code section(s) 11157 and/or 11368, in that
12 Respondent, as described in paragraphs 23 and 24 above, falsely made, altered, forged, uttered,
13 published, passed, or attempted to pass, a false, forged, fictitious or altered prescription for a
14 (narcotic) drug, had in his possession a (narcotic) drug secured by a false, forged, fictitious or
15 altered prescription, or conspired and/or assisted in or abetted any of these acts.

16
17 NINTH CAUSE FOR DISCIPLINE

18 (Issuance and/or Use of Invalid Prescription(s))

19 33. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code,
20 and/or Health and Safety Code section(s) 11150 and/or 11175, in that Respondent, as described in
21 paragraphs 23 and 24 above, issued prescriptions without authority to do so, obtained or
22 possessed an invalid prescription, obtained or possessed a controlled substance by means of such
23 invalid prescription, or conspired and/or assisted in or abetted any of these acts.

24
25 TENTH CAUSE FOR DISCIPLINE

26 (Unprofessional Conduct)

27 34. Respondent is subject to discipline under section 4301 of the Code in that
28 Respondent, as described in paragraphs 23 to 33 above, engaged in unprofessional conduct.

1 PRAYER

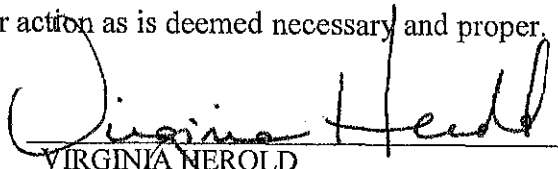
2 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
3 and that following the hearing, the Board of Pharmacy issue a decision:

4 1. Revoking or suspending Pharmacist License No. RPH 28713, issued to Donald
5 Thomas Lowder (Respondent);

6 2. Ordering Respondent to pay the Board the reasonable costs of the investigation and
7 enforcement of this case, pursuant to Business and Professions Code section 125.3;

8 3. Taking such other and further action as is deemed necessary and proper.

9
10 DATED: 5/26/12


11 VIRGINIA HEROLD
12 Executive Officer
13 Board of Pharmacy
14 Department of Consumer Affairs
15 State of California
16 Complainant

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